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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/993,243
Filing Date: November 06, 2001
Appellant(s): MCHALE ET AL.

Matthew A. Rosenberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/20/06 appealing from the Office action mailed 10/18/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6636835	Ragsdale-Elliott et al.	10-2003
4553222	Kurland et al.	11-1985

(9) Grounds of Rejection

The following ground(s) of rejection were presented in the previous Office Action and are applicable to the appealed claims:

Claims 1, 3, 5, 7, 12, 14, 16, 17, 19, 57-60 and 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Ragsdale-Elliott et al. (US Patent 6,636,835).

Ragsdale-Elliott et al. discloses the claimed patron service system for serving at least one patron of an establishment, the system comprising:

At least one patron station (such as patron station shown in figure 1 as 18) located in the establishment and configured to electronically display a plurality of menu items (station 18 displays a menu of options, see figure 2) and electronically display at least one advertisement thereon (station 18 displays photo-images of menu items which Examiner construes to be advertisements for menu items, see column 5 lines 32+; see also figure 3 which discusses advertisements. Examiner construes these images to be "advertisement selection programs" as they are made of readable code to

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accommodate internet browser software such as Netscape, Internet Explorer to include HTML, JavaScript and other related programming designed for enhanced visual graphics, column 5 lines 21+), each patron station also being configured to receive order input from a patron corresponding to an order of at least one of the menu items (patron's order food items, see figure 2);

An establishment server (such as server 10 shown in figure 1) in communication with each patron station, the establishment server comprising a database for storing a plurality of advertisements (such as the database 14 shown in figure 1) and an advertisement selection program for selecting which of the stored advertisements are to be communicated to the at least one patron station for display thereon (system inherently has a program to run the advertising selection in order for the patron to view the photo-images of menu items which Examiner is construing to be advertisements), said establishment server configured to receive and process the order input for later fulfillment of the order (server 10 receives and processes the order from the patron station 18 for fulfillment), execute the advertisement selection program (server 10 executes advertising via database 14, see column 7 lines 20+ and column 8 lines 23+), and communicate the advertisement selected upon execution of the advertisement selection program to the at least one patron station for display thereon (patron views advertisements of menu items on the patron station 18 upon selection); and

A central server (such as an internet server containing a database of photo-images as disclosed in column 5 lines 36) in communication with the establishment server, the central server being configured to communicate at least a portion of the

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advertisement selection program to the establishment server (restaurant owners can transfer, download or upload menu items including photo-images from internet databases for linking to menu items which Examiner construes to be at least a portion of the advertisement selection program as it contains a photo-image or a link to a photo-image in HTML, JavaScript or and other related programming designed for enhanced visual graphics for viewing. Examiner construes this to mean that the restaurant owners can either link their menu items to these databases or can copy the images to their server databases);

(Regarding claim 3) Where the establishment server includes means for changing the content of the advertising database (restaurant owners can upload or download images to update their advertising database and therefore can change the content of the database);

(Regarding claim 5) further comprising a plurality of the establishment servers in communication with the central server, the central server being configured to communicate a plurality of advertisements to each of the establishment servers for storage in their respective advertisement data bases (the title of the patent suggests the use of the system for more than one restaurant when it states "system for restaurants". Therefore more than one of these in restaurant systems would be in communication with the internet and thus be in communication with the central server storing the menu items that can be transferred, downloaded or uploaded as discussed in column 5 lines 36+);

(Regarding claim 7) where each of the patron stations is configured to receive demographic information from a patron and communicate the demographic information to the establishment server (demographic information is entered by the patron at the patron station, this data is compiled for advertising, column 3 lines 30+. Examiner construes that this data is sent to the establishment server as it is used for advertising which is carried out by the establishment server);

(Regarding claim 12) where each patron station is configured to receive advertisement selection input from a patron corresponding to a selection of an advertisement displayed there on (patron's can order menu items by inputting into the patron station which corresponds to an ad displayed there, for example the patron in response to a picture of a food item can order it) and communicate the advertisement selection input to the establishment server for further processing (the order is sent to the establishment server 10 for processing of the order);

(Regarding claim 14) where the patron is linked to a website associated with a particular advertisement in response to input (patron is linked to advertisements via the internet, see column 5 line 40);

(Regarding claim 16) where the patron identity is input into the patron station and communicated to the establishment server for processing (column 8 lines 52+);

(Regarding claims 17 and 19) creation of a patron file for identifying items ordered (system tracks ordered items for serving and payment therefore must be stored);

(Regarding claims 19, 59 and 60) where each patron station is configured to receive advertisement selection input from a patron corresponding to a selection of an advertisement displayed there on (patron's can order menu items by inputting into the patron station which corresponds to an ad displayed there, for example the patron in response to a picture of a food item can order it) and communicate the advertisement selection input to the establishment server for further processing (the order is sent to the establishment server 10 for processing of the order);

(Regarding claim 57) where the central server communicates a plurality of advertisement selection programs to the establishment servers, each of the advertisement selection programs being determinative of any of a plurality of different advertisement selection methodologies (the central server, or internet database communicates ad programs to the establishment servers when the restaurant owner transfers, downloads or links the selective menu items. These transfer, downloads or links are a plurality of different advertisement methodologies);

(Regarding claim 58) where not all establishment server databases store the same plurality of advertisements (as different menu items can be downloaded by different restaurant owners, different advertisements would exist on the different restaurant establishment servers); and

(Regarding claim 65) locally initiating and storing of advertisements on the establishment server database (column 5 lines 36+ discuss restaurant owners transferring original photo-images made by the restaurant owner to the establishment server database).

Claims 8-11, 13, 15, 18, 20, 24, 25, 29, 30, 32-35, 39- 47, 54-56, 61-64, and 66-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragsdale-Elliott et al. (US Patent 6,636,835) in view of Examiner's Official Notice.

(Regarding claims 8, 11, 15, 18, 20, 35, 39 and 40-43) Ragsdale-Elliott et al. is silent regarding where the demographic information, interests of the patrons and purchases of the patrons are stored on a central server accessible to multiple stores or restaurants. Examiner takes official notice that it is old and well known in the art of marketing to store customer information on centralized servers to be accessible from multiple stores. A couple examples include: video stores store customer account information on a centralized database so individual stores can tell if the customer has a healthy account or not, and grocery stores have bonus cards to track items purchased and provide discounts at all the store's chains. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the central storage of customer data as taught by Examiner's Official Notice, in order to have the customer data accessible at multiple restaurants.

(Regarding claims 9-11, 24, 25, 29, 34, 46, 47, 54-56, 61-64, 68 and 69-73) Ragsdale-Elliott et al. is silent regarding where the advertisement selection program is further configured to select an advertisement from the ads based on a patron's order input. Examiner takes official notice that it is old and well known in the art of marketing to recommend related items to increase sales by promoting additional items. For

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example, waitresses commonly ask patrons if they would like to add a salad, side dish, and/or dessert with their meal in order to increase sales. They may also ask if the customer would like upgrades, such as cheese on their burger for example. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the offering of related items as taught by Examiner's Official Notice, in order to increase sales by promoting additional items.

(Regarding claims 10-11, 30) Ragsdale-Elliott et al. is silent regarding where the advertisement selection program is configured to select an advertisement from the ads based on the time of day. Examiner takes official notice that it is old and well known in the art to provide different menus at restaurants for breakfast, lunch and dinner based on the time of day to provide different food items and/or prices for different meals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the presenting of different menus for breakfast, lunch and dinner as taught by Examiner's Official Notice, in order to provide different food items and/or prices for different meals.

(Regarding claims 11 and 32) Ragsdale-Elliott et al. is silent regarding where the advertisement selection program is configured to select an advertisement based on the patron's identity. Examiner takes official notice that it is old and well known in the art of marketing to target market individuals in order to provide customer's with advertisements of items they are more likely to purchase. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

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system of Ragsdale-Elliott et al. with the target marketing as taught by Examiner's Official Notice, in order to provide customers with advertisements of items they are more likely to purchase.

(Regarding claims 13 and 33) Ragsdale-Elliott et al. is silent regarding where the establishment server is configured to store a plurality of advertisement supplements which are associated with an advertisement. Examiner takes official notice that it is old and well known in the art of advertisements to use multiple pictures to provide additional views and information of a product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the multiple photos to make up an advertisement as taught by Examiner's Official Notice, in order to provide customers with additional views and information on products available.

(Regarding claim 66) Ragsdale-Elliott et al. is silent regarding where the access to the establishment server for storing advertisements is restricted. Examiner takes official notice that it is old and well known in the art of computer systems to provide limited access to computer features to provide system integrity. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the restricted access as taught by Examiner's Official Notice, in order to provide system integrity

(Regarding claim 67) Ragsdale-Elliott et al. is silent regarding where the advertisements on the central server are initially created. Examiner takes official notice that it is old and well known in the art of computer systems to create documents on a

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remote computer and send them to a central computer/server in order to share the files with others. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the sharing of advertisements via a central server as taught by Examiner's Official Notice, in order to share created advertisements among the restaurants.

(Regarding claims 44 and 45) Ragsdale-Elliott et al. is silent regarding where the tracking of inventory and updating the inventory based on orders and communicating orders to suppliers to provide accurate and efficient inventory control. Examiner takes official notice that it is old and well known in the art of store computer systems to track inventory, update inventory based on orders and to communicate orders to suppliers. See Ragsdale-Elliott et al. Background of the Invention column 2 lines 1-5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the inventory tracking, updating and ordering as taught by Examiner's Official Notice, in order to provide accurate and efficient inventory control.

Claims 21-23, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragsdale-Elliott et al. (US Patent 6,636,835) in view of Kurland (US Patent 4,553,222).

(Regarding claims 21 and 36) Ragsdale-Elliott et al. is silent regarding the system being capable of providing music selection options. Kurland et al. discloses that it is known in the art to provide restaurant patron music selection options to provide

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entertainment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the music selection options as taught by Kurland et al., in order to provide customers entertainment. In this modification the entertainment is provided the same way the advertisements are provided on the existing Ragsdale-Elliott system.

(Regarding claim 22 and 37) Ragsdale-Elliott et al., as modified above, is silent regarding storing music selection information on the central server. Examiner takes official notice that it is old and well known in the art of marketing to store customer information on centralized servers to be accessible from multiple stores. A couple examples include: video stores store customer account information on a centralized database so individual stores can tell if the customer has a healthy account or not, and grocery stores have bonus cards to track items purchased and provide discounts at all the store's chains. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the central storage of customer data as taught by Examiner's Official Notice, in order to have the customer data accessible at multiple restaurants.

(Regarding claim 23 and 38) Ragsdale-Elliott et al., as modified above, is silent regarding where the advertisement selection program is configured to select an advertisement based on the patron's information such as music selections. Examiner takes official notice that it is old and well known in the art of marketing to target market individuals in order to provide customer's with advertisements of items they are more likely to purchase. It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to provide the system of Ragsdale-Elliott et al., as modified above, with the target marketing as taught by Examiner's Official Notice, in order to provide customers with advertisements of items they are more likely to purchase.

(10) Response to Argument

Applicant has argued that Ragsdale does not disclose the use of advertising on the patron stations.

The Examiner contends that Ragsdale discloses advertising on patron stations when it presents images (such as images obtained via the internet as discussed in column 5 lines 30+) on the display which is a touch screen monitor (defined by reference number 18, see figure 1 that shows patron station). Examiner notes that the Examiner is following the definition of advertising from the dictionary which states "The action of attracting public attention to a product or business." See attached definition for further reference. The Examiner contends that the use of these images constitutes advertising as it attracts public attention to the product or business the image represents. Examiner further notes that figure 3 indicates the presentation on the customer display of "MISCELLANEOUS DATA AND IMAGES". Examiner construes this to include menu items, such as the menu items listed in figure 3 with numerical numbers 1-7, and also to include images as the title indicates and are discussed in column 5. For example "6. TRIVIA HEALTH QUESTIONS" is construed to be a menu item, while images, such as an image linked to preselected food as discussed in column

5, would constitute an "advertisement". For example if an image of a softdrink were linked to a menu item such as 30e as shown in figure 2 this image would be an "advertisement".

The Examiner further notes, that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant has argued that any logical reading of its claims requires "advertisements" to be construed as something above and beyond the display of menu items.

The Examiner contends that the images imported or linked to in Ragsdale meet the dictionary definition of advertising because the images attract public attention to products and services for which they are linked, and are thus by definition "advertisements". Examiner notes that the definition of advertising used from the dictionary states "The action of attracting public attention to a product or business." See attached photocopy of the dictionary for further reference. "Menu items" as claimed are construed to be the items listed on the screen that may or may not have images, or "advertisements", associated with them. Examiner construes menu items to be for example the menu items listed in figure 3 with numerical numbers 1-7, and the images as the title of figure 3 indicates and are discussed in column 5 to be the "advertisements". For example "6. TRIVIA HEALTH QUESTIONS" is construed to be a menu item, while images, such as an image linked to a preselected food item, as

discussed in column 5, would constitute an "advertisement". For example if an image of a softdrink were linked to a menu item such as 30e as shown in figure 2 this image would be an "advertisement".

The Examiner further notes, that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant has argued that the elements of the menu items and the electronically displayed advertisement are claimed separately.

The Examiner contends that the menu items and advertisement images of Ragsdale are disclosed as separate elements. The Examiner contends that the images imported or linked to in Ragsdale meet the dictionary definition of advertising because the images attract public attention to products and services for which they are linked, and are thus by definition "advertisements". Examiner notes that the definition of advertising used from the dictionary states "The action of attracting public attention to a product or business." See attached photocopy of the dictionary for further reference. "Menu items" as claimed are construed to be the items listed on the screen that may or may not have images, or "advertisements", associated with them. Examiner construes menu items to be for example the menu items listed in figure 3 with numerical numbers 1-7, and the images as the title of figure 3 indicates and are discussed in column 5 to be the "advertisements". For example "6. TRIVIA HEALTH QUESTIONS" is construed to be a menu item, while images, such as an image linked to a preselected food item, as

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discussed in column 5, would constitute an "advertisement". For example if an image of a softdrink were linked to a menu item such as 30e as shown in figure 2 this image would be an "advertisement".

The Examiner further notes, that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant has argued that the downloading or linking of images of Ragsdale has nothing to do with advertisements.

The Examiner contends that the downloading and/or linking of images as disclosed in Ragsdale has everything to do with advertisements as the images attract public attention to products and services for which they are associated. The Examiner contends that the images imported or linked to in Ragsdale meet the dictionary definition of advertising because the images attract public attention to products and services for which they are linked, and are thus by definition "advertisements". "Menu items" as claimed are construed to be the items listed on the screen that may or may not have images, or "advertisements", associated with them. Examiner construes menu items to be for example the menu items listed in figure 3 with numerical numbers 1-7, and the images as the title of figure 3 indicates and are discussed in column 5 to be the "advertisements". For example "6. TRIVIA HEALTH QUESTIONS" is construed to be a menu item, while images, such as an image linked to a preselected food item, as discussed in column 5, would constitute an "advertisement". For example if an image

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of a softdrink were linked to a menu item such as 30e as shown in figure 2 this image would be an "advertisement".

The Examiner further notes, that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant has argued that the internet in Ragsdale does not qualify as a central server within the meaning of the present claims – namely the communication of an advertisement selection.

The Examiner contends that Ragsdale inherently discloses a "central server" as claimed. Examiner contends that Ragsdale discloses the accessing of image databases via the Internet in column 5 lines 36, and therefore, inherently, a server must exist in order for these image databases to be saved upon and to allow the ability to communicate them via the Internet. Ragsdale discloses the communication of an advertisement selection via the internet.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Elaine Gort

 2/10/07

Conferees:

Vincent Millin 

Ryan Zeender 